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THE THOMAS KINKADE COMPANY,
FORMERLY KNOWN AS, MEDIA ARTS
GROUP, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID KAYNE, an individual citizen of
Georgia,

Plaintiff,

v.

THE THOMAS KINKADE COMPANY,
formerly known as MEDIA ARTS
GROUP, INC., a Delaware Corporation,,

Defendant.

CASE NO. C 07-4721 (JF) (RS)

**DECLARATION OF CHARLES E. WEIR
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING
ORDER**

DATE: October 5, 2007
TIME: 9:00 a.m.
JUDGE: Hon. Jeremy Fogel
DEPT: 3, 5th Floor

DECLARATION OF CHARLES E. WEIR

I, Charles E. Weir, declare as follows:

1. I am a partner with the law firm of McDermott, Will & Emery, LLP, counsel of record for plaintiff The Thomas Kinkade Company ("TKC"). I have personal and first hand knowledge of the facts stated herein, and if called upon, I could and would testify competently thereto.

2. On February 3, 2003, Plaintiff David Kayne ("Kayne") filed his Answering Statement Combined with Counterclaim in the matter *Media Arts Group, Inc. v. David Kayne, Tracy Kayne, and Kayne Galleries of Georgia, Inc.*, AAA Case No. 74 181 02154 02 SAT (the "San Francisco Arbitration"). A true and correct copy of this document is attached hereto as Exhibit 1.

3. On February 16, 2004, Kayne filed the document entitled Respondent / Cross-Claimants' Arbitration Brief in the San Francisco Arbitration. A true and correct copy of this document is attached to the Weir Declaration as Exhibit 2.

4. On July 6, 2004 the arbitration panel in the San Francisco Arbitration issued its Reasons for Award. A true and correct copy of this document is attached hereto as Exhibit 3.

5. On June 22, 2004, Judge Dandurand issued his Concurring and Dissenting Decision of Judge Dandurand in the San Francisco Arbitration. A true and correct copy of Judge Dandurand's concurring and dissenting opinion is attached hereto as Exhibit 4.

6. On August 27, 2004, the arbitration panel in the San Francisco Arbitration issued its Final Award. A true and correct copy of this document is attached hereto as Exhibit 5.

7. On November 23, 2004, Kayne filed his Defendant's Memorandum in Opposition to Plaintiff's Motion to Confirm Arbitration Award in the matter *The Thomas Kinkade Company v. David Kayne et. al.*, United States District Court for the Northern District of California Case No. CV-04-0186-MISC (SI) (the "Northern California Action"). A true and correct copy of this document is attached hereto as Exhibit 6.

8. On November 23, 2004, Kayne also filed the Declaration of David Kayne in Opposition to Plaintiff's Motion to Confirm Arbitration Award and In Support of Defendants'

1 Motion to Vacate or Modify Arbitration Award Pursuant to 9 U.S.C. §§ 10, 11 in the Northern
2 California Action. A true and correct copy of this document is attached hereto as Exhibit 7.

3 9. On January 11, 2005, Hon. Susan Illston issued her Order Denying Plaintiff's
4 Motion to Confirm Arbitration Award and Granting Defendants' Motion to Vacate or Modify
5 Award in the Northern California Action. A true and correct copy of this document is attached
6 hereto as Exhibit 8.

7 10. On September 13, 2006, Kayne filed his Brief in Support of Motion for Temporary
8 Restraining Order in the Superior Court of Fulton County State of Georgia matter *David Kayne v.*
9 *The Thomas Kinkade Company*, File No. 2006CV121748. A true and correct copy of this
10 document is attached hereto as Exhibit 9.

11 11. On November 3, 2006, Kayne filed Plaintiff's Brief in Response to Defendant's
12 Motion to Compel Arbitration and Motion to Dismiss in the matter *David Kayne v. The Thomas*
13 *Kinkade Company*, United States District Court for the Northern District of Georgia Case No.
14 1:06-CV-2168-CAP (the "Georgia Action"). A true and correct copy of this document is attached
15 hereto as Exhibit 10.

16 12. On March 29, 2007, Hon. Charles A. Pannell, Jr. issued an Order in the Georgia
17 Action compelling arbitration. A true and correct copy of this document is attached hereto as
18 Exhibit 11.

19 13. On April 17, 2007, Kayne filed his Petition for Declaratory Judgment and
20 Injunctive Relief in the Superior Court of Fulton County State of Georgia matter *David Kayne v.*
21 *The Thomas Kinkade Company*, File No. 2006CV121748. . A true and correct copy of this
22 document is attached hereto as Exhibit 12.

23 14. On June 18, 2007, Kayne filed his Brief of Appellant in the United States Court of
24 Appeals for the Eleventh Circuit matter *David Kayne v. The Thomas Kinkade Company, Inc.*,
25 USCA Case No. 07-11983-H (the "Eleventh Circuit Appeal"). A true and correct copy of this
26 document is attached hereto as Exhibit 13.

27 15. On August 20, 2007, Kayne filed his Reply Brief of Appellant in the Eleventh
28 Circuit Appeal. A true and correct copy of this document is attached hereto as Exhibit 14.

16. On September 12, 2007 arbitrator John J. McCauley issued a Scheduling Order, in the matter *The Thomas Kinkade Company v. David Kayne*, AAA Case Number 74-181-E-000733-06. A true and correct copy of this document is attached hereto Exhibit 15.

Dated: October 3, 2007

By: _____/s/
Charles E. Weir
Attorneys for Defendant
THE THOMAS KINKADE COMPANY